

BUREAU OF AUTOMOTIVE REPAIR

INITIAL STATEMENT OF REASONS

HEARING DATES:

Tuesday, July 5, 2011 at 2:00pm
Department of Consumer Affairs
Hearing Room
1625 North Market Blvd., S-102
Sacramento, CA 95834

**SUBJECT MATTER OF THE
PROPOSED REGULATIONS:**

Administrative Citation and Fines for
Unlicensed Activity

- I. Administrative Citation and Fines;
- II. Authority to Issue Citations and Fines
for Unlicensed Practice;
- III. Citation Format;
- IV. Citations for Unlicensed Practice;
- V. Amount of Fines for Unlicensed
Practice;
- VI. Compliance with Citation/Order of
Abatement;
- VII. Contested Citations and Request for a
Hearing or Informal Citation
Conference;
- VIII. Disconnection of Telephone Service

SECTIONS AFFECTED:

§§ 3394.40, 3394.41, 3394.42, 3394.43,
3394.44, 3394.45 and 3394.46 of Title 16,
Division 33, Chapter 1, Article 11.2,
California Code of Regulations

SPECIFIC PURPOSE OF THE REGULATORY PROPOSAL:

The Bureau of Automotive Repair (BAR) is proposing the following regulations in order to adopt Administrative Citation and Fines for Unlicensed Activity authority pursuant to Business and Professions §148.

BAR is proposing to adopt the following regulations:

- I. **Article 11.2 Administrative Citations and Fines, Chapter 1, Division 33, Title 16, California Code of Regulations:** Article 11.2 will be created to contain regulations specific to administrative citations and fines.

- II. Authority to Issue Citations and Fines for Unlicensed Practice:** This section provides BAR the ability to issue and administer citations to an unlicensed person or entity acting in the capacity of a licensee or registrant. The BAR chief has the ability to appoint a designee to determine when and against whom a citation will be issued. (§3394.40)
- III. Citation Format:** Citations must be in written form and describe the nature and facts for each violation. In addition, the citation shall inform the cited person of his/her right to contest the citation. BAR must serve the citation in person or by certified mail pursuant to §11505 (c) of the Government Code. (§3394.41)
- IV. Citations for Unlicensed Practice:** The BAR chief or his/her designee shall issue citations containing orders of abatement against any person or entity who is performing or who has performed any services for which a license or registration is required. When a citation is issued it must include an order of abatement and may include a fine. Citations issued pursuant to Article 11.2 Administrative Citations and Fines shall be separate from and in addition to any other civil or criminal actions. (§3394.42)
- V. Amount of Fines for Unlicensed Practice:** If the BAR chooses to cite a licensee or registrant with an expired license, it shall first issue an order of abatement without a fine to a person or entity with an expired license. The order of abatement will notify the licensee to immediately cease all work and/or any work in progress that requires a valid license or registration. The order of abatement will fix 30 days to pay the license renewal and any delinquency and other fees, after which time the BAR may issue a fine of up to \$5,000. Furthermore, if an expired licensee continues to operate without a valid license or registration BAR may issue a citation, fine, and/or take other disciplinary action.
- BAR may issue administrative citations and fines to any unlicensed person or entity acting in the capacity of a licensee or registrant up to \$5,000. (§3394.43)
- VI. Compliance with Citation/Order of Abatement:** If the cited person who has been issued an order of abatement cannot complete the correction within the time set in the citation, due to uncontrollable factors and after reasonable diligence, the cited person may request an extension from BAR. The request for an extension must be in writing and within the time set in the citation. If a citation is not contested, or the citation is contested and the cited person does not prevail, failure to correct the violation or pay the fine will be considered a failure to comply with the citation. If a fine is not paid it will be added to the cited person's license or registration renewal fee. Licenses and registrations will not be renewed without the

payment of the renewal fee and fine. This section does not give permission to continue operation without a valid license or registration. (§3394.44)

VII. Contested Citations and Request for a Hearing or Informal Citation Conference: When a citation is contested, the cited person may submit a written request for an administrative hearing or informal citation conference within 10 days after service of the citation. When a request for an informal citation conference is made BAR must hold the conference within 60 days after the receipt of the request. If an informal citation conference is held, the request for an administrative hearing is deemed withdrawn. If the citation is upheld or modified due to the conference, the original citation is withdrawn and a modified citation will be mailed out within 15 days of the informal citation conference. If the cited person wishes to contest the upheld or modified citation a written request for an administrative hearing must be made within 30 days. (§3394.45)

VIII. Disconnection of Telephone Service: BAR may seek the disconnection of telephone service of any unlicensed or unregistered person or entity acting in the capacity of a licensee or registrant. (§3394.46)

FACTUAL BASIS:

The Bureau of Automotive Repair (BAR) was established within the California Department of Consumer Affairs (DCA) in 1971 with the enactment of the Automotive Repair Act¹. BAR was created by Senate Bill (SB) 51 (Beilenson, Chapter 1578, Statute 1971), which mandated a statewide automotive repair consumer protection program. In furtherance of its mandate, BAR administers a statewide licensing and enforcement program.

Through its statewide offices, BAR conducts consumer protection services related to Title 16, Division 33, of the California Code of Regulations. BAR regulates Automotive Repair Dealers, Lamp and Brake stations and adjusters, and Smog Check stations and technicians. BAR receives and mediates complaints from the public, investigates violations of the Automotive Repair Act, Smog Check laws, and associated regulations. When appropriate, cases are referred to the Attorney General's office or law enforcement authorities for administrative action, civil and/or criminal prosecution.

Legislation provided BAR the authority to adopt regulations to issue administrative citations and fines pursuant to Business and Professions Code (B&P) §148. SB 362 (Figueroa, Chapter 788, Statutes of 2003) increased the maximum citation amount from \$2,500 to \$5,000, violators operating without a valid license or registration may be issued a citation.

¹ Business and Professions Code § 9880, et seq.

Unlicensed practice is a real and immediate threat to the health and welfare of the public. Currently, BAR cannot pursue disciplinary action against a person or entity operating with an expired license or an unlicensed person or entity acting in the capacity of a licensee because the necessary regulations have not been adopted. At present, BAR's only administrative recourse is to request that a business or individual become licensed or registered and pay the applicable licensing fee. Therefore, establishing fine authority is warranted in light of the BAR's mandate to provide consumer protection.

These proposed regulations allow BAR to fine an unlicensed business or entity up to \$5,000. BAR may assess administrative fines to an unlicensed person or entity acting in the capacity of a licensee or registrant of no more than \$5,000 for each violation. The amount of the fine shall be based on the following criteria:

1. The nature, gravity, severity, and seriousness of the violation.
2. The persistence of the violation.
3. The good faith or willfulness of the violator to cooperate with the bureau.
4. The history of previous violations by that violator, including the commission of numerous and repeated violations.
5. The failure to perform work for which money was received.
6. The making of any false or misleading statement in order to induce a person to authorize repair work or pay money.
7. The failure to make restitution to consumers affected by the violation.
8. The extent to which the violator has mitigated or attempted to mitigate any damage or injury caused by the violation.
9. The degree of incompetence or negligence in the performance of duties and responsibilities.
10. The purposes and goals of this chapter and other matters as may be appropriate.

A cited person or entity may appeal the citation with either an informal citation hearing or a hearing at the Office of Administrative Hearings (OAH). Over the last three fiscal years BAR has had an average citation appeal rate of 6.3% for violations issued pursuant to H&S §44051.5. Due to the straightforward nature of the citations and the ability of the cited person or business to request an informal citation conference, BAR expects unlicensed citations would have the same appeals rate of 6.3%. This proposed regulation will have a negligible effect on the workload of OAH. All expenses incurred by BAR will be fully absorbed through the collection of fees.

This proposed regulation fills the need to provide a higher level of consumer protection from unlicensed practice. BAR does not intend to use this regulation for revenue raising purposes and is not in need of additional revenue as it has sufficient revenue to meet budget needs. Additionally, BAR does not project a future need for an increase to revenue.

UNDERLYING DATA:

- *Recommendations to Reform California's Smog Check Program*, California Environmental Dialogue, February 2009.
- Department of Consumer Affairs 2010-11 Price Book, Attachment 4, Operating Expenses.
- Bureau of Automotive Repair, Hearing Cost Calculation.

BUSINESS IMPACT:

The proposed regulations will not have a significant adverse economic impact on businesses.

These regulations will strengthen the BAR's ability to enforce its laws and regulations and provide consumers additional protection. In the first full year of the regulation BAR expects to issue 1,500² citations at an average cost of \$450 resulting in up to \$675,000 in fines. This number is projected to decrease as the industry becomes aware of the fine authority and the BAR's ability to use these provisions to fine an unlicensed person or entity. In the second year of the regulation BAR projects 1,000 citations will be issued resulting in approximately \$450,000 in fines. BAR has projected it will issue 400 citations in the third year and ongoing, resulting in approximately \$180,000 in fines annually. Over the lifetime of this proposed regulation BAR will collect an estimated \$2,565,000 in fines from enforcing the statutes of B&P 148.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

This regulation does not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES:

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be effective as and less burdensome to the affected private persons than the proposed regulation.

Set forth below are the alternatives that were considered and the reasons each alternative was rejected:

- I. BAR considered taking no action. However, BAR would not be able to implement the provisions of SB 362 and would not meet its mandate to provide consumer protection.

² BAR estimates the number of unlicensed businesses and individuals based on complaints received from 1/1/2009 to 12/31/2009, sorted by complaints against unlicensed shops.